Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	

COMMENTS OF THE
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE,
CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL,
ILLINOIS COMMERCE COMMISSION, AND
MARYLAND PUBLIC SERVICE COMMISSION

INTRODUCTION

The New York State Department of Public Service, the Connecticut Department of Public Utility Control, the Illinois Commerce Commission, and the Maryland Public Service Commission submit these comments in response to the Public Notice (FCC-00J-3) released on October 4, 2000. By that Notice the Federal-State Joint Board on Universal Service (Joint Board) seeks comment on the recommendation of the Rural Task Force (RTF) for revision of the federal "high cost" support mechanism for rural study areas.[1] The Rural Task Force, appointed by the Joint Board on July 1, 1998, was charged with considering "whether a FLEC (forward-looking economic cost) mechanism for rural carriers should have platform design features or

[1] The rural study areas under consideration in this case are actually the study areas of incumbent local exchange carriers that fall under the statutory definition of "rural carriers." Because this definition is based largely on the size of the carrier, rather than the characteristics of its service territory, some of the study areas at issue here may encompass significant amounts of non-rural territory (e.g., towns, suburbs, even cities). In addition, the areas under consideration here do not include the significant amounts of rural territory served by "non-rural" carriers.

input values that are different from those that are appropriate for non-rural carriers."[2] The Rural Task Force submitted its recommendation to the Joint Board on September 29, 2000. Its principal recommendations are to eschew the use of any forward-looking cost model for calculating "high cost" support in rural company study areas and instead to simply inflate the existing, embedded cost-based support mechanism for these areas. We strongly oppose these recommendations.

I. The Recommended Mechanism Has Not Been Shown To Produce Sufficient, And Only Sufficient, Federal Support In The Affected Study Areas.

The RTF recommends that federal high cost support in rural company study areas be determined by expanding the existing rural company high cost mechanism to remove the effects of caps placed on it in prior years.[3] The RTF states that this "rebasing" would enlarge the current support available to these study areas ($1.553 billion) by approximately $118.5 million. The RTF recommends that this amount then be allowed to grow annually in proportion to both line growth and inflation. In addition to endorsing this growth, the RTF proposes that rural ILECs be allowed to recover:

1) the costs of catastrophic events (e.g., floods, fires, other natural disasters);

2) a portion of additional costs incurred when the company's plant in service grows more than 14% annually (a so-called "safety net"); and

3) some undefined amount of additional funding for investments made after acquiring exchanges from other carriers (a so-called "safety valve mechanism").

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2 CC Docket 96-45, Public Notice (FCC 98J-1) released July 1, 1998, p.3.

3 The existing mechanism for rural study areas bases support on the incumbent company's embedded (booked) costs. The overall fund size is allowed to grow only to the extent that additional lines are placed in service each year. In addition, the amount of corporate operations expenses included in calculating a study area's support is limited. The RTF proposes "rebasing" rural study area support as though these caps were not in effect.

The RTF has provided no estimate of the dollar impact of these additions to the proposed "rebased" fund. Indeed, the RTF has not even shown what the impact of "rebasing" the fund would be in all, or even in any specific, study areas.

The Telecommunications Act of 1996 states that federal universal service "support should be explicit and sufficient to achieve the purposes of this section."[4] As the Federal Communications Commission (Commission) observed in its order adopting a forward-looking support mechanism for non-rural company study areas, "the primary role of federal high-cost support is to enable reasonable comparability of rates *among* states."[5] The Commission has also stated its commitment "to the objective that the fund not be any larger than is necessary to achieve the various goals of section 254."[6] Thus, the federal universal service support mechanism should provide each area no more than the amount of support needed to enable the relevant state to ensure reasonably comparable rates in that area. To determine whether any proposed mechanism would achieve these goals one must perform at least some analysis of the need for support in each area and show that the proposed mechanism will provide that amount, and only that amount, of support.

The RTF has provided no such analysis in support of its recommended mechanism. The proposal does not offer any empirical evidence that the proposed high cost mechanism will produce "sufficient" support in rural company study areas. No attempt has been made to show that either the total amount of support recommended or the amount of support that would be available in individual

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4 Telecommunication Act of 1996, Section 254(e).

5 CC Docket 96-45, NINTH REPORT & ORDER AND EIGHTEENTH ORDER ON RECONSIDERATION (Ninth Report and Order), Adopted: October 21, 1999, Released: November 2, 1999, para.7

6 Ninth Report and Order, para. 59.

study areas is, in fact, only that amount necessary to enable states to establish rates for "universal service" in these areas that are "reasonably comparable" to those in urban areas (§254(b)(3)).

The primary justification offered for these proposals is the RTF's broad characterization of the demographic, economic, and operational differences between rural and non-rural study areas. For example, the RTF has determined that rural carrier service areas generally have lower population densities and higher per line costs than do non-rural carrier service areas.[7] Its position actually contrasts "rural" (generally small) and "non-rural" (large) carriers; it does not compare the rural areas served by those two types of carriers. As competitively-neutral Federal universal service support should be available to any Eligible Telecommunications Carrier (ETC) serving an area, the amount of funding should not depend on the size of the serving carrier. Hence, the RTF's "rural"/"non-rural" comparison offers faint support for the proposition that high cost support should be calculated differently in rural company and non-rural company study areas.

Even if different support mechanisms for rural and non-rural company study areas are justified, the RTF's assumption provide no justification for the specific level of "rural" funding proposed or for its distribution among rural company study areas. The RTF has not shown that $1.67 billion is both necessary and sufficient support for these areas. Indeed, it hasn't even indicated how much support the proposed mechanism would make available in any rural company study area. Absent such a basic showing of the specific levels of need in rural company study areas and how the proposed mechanism would satisfy such needs, the RTF's proposed funding should not be adopted.

[7] RTF Recommendation, pp. 11-14.

I. The Joint Board Should Not Adopt The RTF's Recommendations For Enabling Or Encouraging Investments In "Advanced Service" Capabilities.

As an initial predicate for its recommended support mechanism, the RTF "reached agreement that a primary purpose of universal service support is to promote investment by both ILECs and CLECs in rural America's telecommunications infrastructure" in order "to ensure universal access to telecommunications services which are comparable to those available in urban areas, and to provide a platform for delivery of advanced services."[8] The Task Force further declares that "provision of access to advanced services is required under Section 254(b)" and asserts that its proposed mechanism "inherently provides incentives for the infrastructure investments necessary for providing access to advanced services."[9] The RTF recommends adoption of a "no barriers to advanced services" policy that would require universal service funding to support plant investments that provide, or could be augmented to provide, access to advanced services.

In addition, the RTF finds that the Act separately requires reasonably comparable access to information services (e.g., access to Internet Service Providers).[10] It concludes that this mandate requires that rural networks be capable of providing the same "bit rate" as do urban networks, which the RTF contends is 28.8 kilobits per second (kbps). Thus, the RTF recommends that the definition of services to be supported by federal universal service funds be expanded to include access to information services at speeds reasonably comparable to those available to urban customers.

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8 RTF Recommendation, p.14 (emphasis added)

9 RTF Recommendation, p. 22

10 RTF Recommendation, p. 23

While we certainly do not intend to consign rural customers to being served by second-rate telephone networks, we oppose these RTF recommendations. The RTF has simply "put the cart before the horse" in recommending federal funding for access to information and advanced services at this time. As the RTF itself recognizes, the Joint Board and Commission would have to add access to information or advanced services to the list of supported services before they are eligible for support through the Federal universal service fund. The RTF's recommendation reverses that process.

Moreover, the RTF's reading of the requirements of §254 is far from settled. For example, while the RTF relies on §254(b) to support its view that access to information and advanced services are required, that view may be incorrect. First, the Fifth Circuit has determined that the principles enumerated in §254(b) are not "specific statutory commands" that require "the FCC to adopt certain cost methodologies for calculating universal service support."[11] Second, §254(c)(1)(B) requires the Joint Board and Commission in evaluating services for inclusion in the definition of "services that are supported by Federal universal service support mechanisms" to consider whether such services "have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers." The RTF has made no such showing. Finally, §254(e) commands that federal universal service funds be used "only for the provision, maintenance, and upgrading of facilities and services for which it is intended" (i.e., the services that are defined as eligible for support under §254(c)). Thus, any funding to support services not currently on the list of eligible services would violate §254.

[11] *Texas Office of Public Utility Counsel v. FCC* 183F.3d 393, ___(5th Cir.1999). Cert. Granted

CONCLUSION

The RTF's recommendations, by its own admission, are merely the consensus of the thirteen individuals who signed the final report, but who disavow representing the positions of their respective organizations.[12] The role of the Joint Board, however, is broader; it must balance the interests of those who will benefit from these high cost funds with the interests of those who must shoulder the burden of these programs. Absent a showing that those payors are being asked to fund only an amount sufficient to meet the Act's universal service requirements, the RTF's proposal should be rejected.

Respectfully submitted,

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12 RTF Recommendation, p3

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Albany, New York